

# Exhibit W

Page 1

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW JERSEY

3 IN RE: : MDL NO.:

JOHNSON & JOHNSON TALCUM : 16-2738 (MAS) (RLS)
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4	POWDER PRODUCTS	:
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MARKETING, SALES	:
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5 PRACTICES, AND PRODUCTS :

LIABILITY LITIGATION	:
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8 Wednesday, July 10, 2024

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Remote videotaped deposition of PAUL  
HESS, via Zoom video conference, conducted at  
the location of the witness in Atlanta,  
Georgia, taken on the above date, beginning at  
approximately 9:06 a.m., before Jessica M.  
Gericke, RPR, CCR-NJ, and Notary Public in and  
for Delaware, New Jersey, and Pennsylvania.

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<p>Page 2</p> <p>1 APPEARANCES VIA ZOOM VIDEO CONFERENCE:  2 BOVIS, KYLE, BURCH &amp; MEDLIN, LLC  BY: ERIC LUDWIG, ESQUIRE  3 200 Ashford Center North  Suite 500  4 Atlanta, GA 30338-2668  678-338-3925  5 eludwig@boviskyle.com  (Present with Witness)  6  Counsel for Deponent and Materials  7 Analytical Services  8  BEASLEY, ALLEN, CROW, METHVIN,  9 PORTIS &amp; MILES, P.C.  BY: P. LEIGH O'DELL, ESQUIRE  10 218 Commerce Street  Montgomery, AL 36104  11 334-269-2343  leigh.odell@beasleyallen.com  12 (Present with Witness)  13 Counsel for Plaintiff Steering Committee  14  COHEN, PLACITELLA &amp; ROTH  15 BY: CHRISTOPHER M. PLACITELLA, ESQUIRE  DREW M. RENZI, ESQUIRE  16 127 Maple Avenue  Red Bank, NJ 07701  17 732-747-9003  cplacitella@cpirlaw.com  18  Counsel for Plaintiff Steering Committee  19  20  21  22  23  24  25</p>	<p>Page 4</p> <p>1 APPEARANCES (continued):  2 ALSO PRESENT:  3 SPECIAL MASTER JOEL SCHNEIDER  4 CAROLIN De La ROSA, VIDEOGRAPHER  5 SHU-CHUN SU, PH.D.  6 - - -  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>
<p>Page 3</p> <p>1 APPEARANCES (continued):  2 ASHCRAFT &amp; GEREL, LLP  BY: MICHELLE A. PARFITT, ESQUIRE  3 1824 K Street NW  Washington, DC 20006  4 202-669-0032  mparfitt@ashercraftlaw.com  5  Counsel for Plaintiff Steering Committee  6  REILLY, McDEVITT &amp; HENRICH, P.C.  7 BY: BRANDY L. HARRIS, ESQUIRE  8 3 Executive Campus  Suite 310  9 Cherry Hill, NJ 08002  856-317-7180  10 bharris@rmh-law.com  11 Counsel for Personal Care Products Council  12  KING SPALDING, LLP  13 BY: MORTON D. DUBIN, II, ESQUIRE  KEVIN HYNES, ESQUIRE  14 JAKE KEESTER, ESQUIRE  1185 Avenue of the Americas  15 34th Floor  New York, NY 10036  16 212-790-5343  mdubin@kslaw.com  17  Counsel for Defendant Johnson &amp; Johnson  18  FAEGRE DRINKER BIDDLE &amp; REATH LLP  19 BY: SUSAN M. SHARKO, ESQUIRE  20 600 Campus Drive  Florham Park, NJ 07932  21 973-549-7000  susan.sharko@faegredrinker.com  22  Counsel for Defendant Johnson &amp; Johnson  23  24 - - -  25</p>	<p>Page 5</p> <p>1 INDEX  2 WITNESS NAME PAGE  3 Paul Hess  4 By Mr. Dubin 6  5  6 - - -  7  8 EXHIBITS  9 NO. DESCRIPTION PAGE  10 1 Resume of Paul M. Hess 8  11 2 MAS Report, dated 20  February 24, 2020  12  3 MAS Report, dated February 22  13 1, 2019  14 4 Hess Slide 2 46  15 5 MAS Report, dated September 58  16 16, 2020  17  6 MAS report, dated February 64  17 24, 2020  18 7 Declaration of William 69  Longo, Ph.D.  19  8 Hess Slide 20 70  20  9 Hess Slide 22 74  21  10 Hess Slide 24 76  22  11 Hess Slide 25 81  23  12 J3 Resources Inc. Report, 83  24 dated July 13, 2018  25</p>

<p style="text-align: right;">Page 6</p> <p>1 INDEX (continued):</p> <p>2 13 MAS Report, dated April 13, 87 2021</p> <p>3</p> <p>4 14 MAS Report, dated February 91 28, 20</p> <p>5 15 Hess Slide 34 105</p> <p>6 16 Su Tables 108</p> <p>7 17 Hess Slide 43 110</p> <p>8 18 Hess Slide 127</p> <p>9 19 Hess Slide 134</p> <p>10 20 Image, CX-00056 137</p> <p>11 21 CX-00012 143</p> <p>12 22 Hess Slide 48 143</p> <p>13 23 Image, CX-00062 147</p> <p>14 24 Image, CX-00019 164</p> <p>15 25 Image, CX-00029 169</p> <p>16 26 William E. Longo, Ph.D., 176 Deposition Transcript, dated March 22, 2024</p> <p>17</p> <p>18 27 Hess Slide 95 178</p> <p>19 ---</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 8</p> <p>1 have received from you or at least I assume it</p> <p>2 originated with you and we'll just call that</p> <p>3 up and walk a little bit through your</p> <p>4 employment background.</p> <p>5 MR. DUBIN: Jake, can we call</p> <p>6 that up, please?</p> <p>7 (Exhibit 1 marked for</p> <p>8 identification.)</p> <p>9 BY MR. DUBIN:</p> <p>10 Q. So it looks like you joined MAS in</p> <p>11 December of 1995; is that correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. Can you tell me very briefly</p> <p>14 what this position was that you held before</p> <p>15 that at Law Associates?</p> <p>16 A. PLM microscopist.</p> <p>17 Q. And what was -- what is or was Law</p> <p>18 Associates?</p> <p>19 A. They were an engineering firm in</p> <p>20 Atlanta, Georgia.</p> <p>21 Q. Okay. Do you know why it has "law"</p> <p>22 in the name?</p> <p>23 A. I have no idea.</p> <p>24 Q. Okay. Does that have anything to do</p> <p>25 with something legal or is it just -- was it</p>
<p style="text-align: right;">Page 7</p> <p>1 ---</p> <p>2 VIDEOGRAPHER: We are now on</p> <p>3 the record. My name is Carolin De La Rosa, a</p> <p>4 videographer for Golkow Litigation Services.</p> <p>5 Today's date is July 10, 2024, and the time is</p> <p>6 9:06 a.m. This deposition is being held in</p> <p>7 the matter of Talcum Powder litigation MDL</p> <p>8 2738 versus Johnson &amp; Johnson. The deponent</p> <p>9 today is Paul Hess.</p> <p>10 All parties to this deposition</p> <p>11 are appearing remotely and have agreed for the</p> <p>12 witness to be sworn in remotely. All parties</p> <p>13 are noted on the stenographic record this</p> <p>14 morning.</p> <p>15 Would the court reporter,</p> <p>16 please, administer the oath to the witness.</p> <p>17 ---</p> <p>18 PAUL HESS, after having been</p> <p>19 first duly sworn, was examined and</p> <p>20 testified as follows:</p> <p>21 BY MR. DUBIN:</p> <p>22 Q. Hi, Mr. Hess. Good morning.</p> <p>23 A. Good morning.</p> <p>24 Q. So we're going to make the first</p> <p>25 exhibit to your deposition a resume that I</p>	<p style="text-align: right;">Page 9</p> <p>1 somebody's name? You have no idea?</p> <p>2 A. No idea, sir.</p> <p>3 Q. Okay. And then it looks like you</p> <p>4 departed MAS in August of 2008 for a fairly</p> <p>5 short period and went to Long Brothers Oil &amp;</p> <p>6 Gas; is that right?</p> <p>7 A. That is correct.</p> <p>8 Q. Okay. And then you went back to MAS</p> <p>9 and you were there until February of 2023, as</p> <p>10 a full-time employee, before leaving for a</p> <p>11 brief period of a year where you were just a</p> <p>12 consultant; is that right?</p> <p>13 A. That is correct.</p> <p>14 Q. Okay. And then your current</p> <p>15 employment status at MAS is what?</p> <p>16 A. Part-time.</p> <p>17 Q. Okay. And looking through your</p> <p>18 resume, it looks like you have a bachelor's of</p> <p>19 science degree; is that correct?</p> <p>20 A. That is correct.</p> <p>21 Q. You don't have any further advanced</p> <p>22 degrees, right, no master's and no Ph.D.?</p> <p>23 A. No, sir.</p> <p>24 Q. Okay. I am sorry. Sometimes it can</p> <p>25 be confusing.</p>



<p style="text-align: right;">Page 10</p> <p>1 It's correct you do not have a</p> <p>2 master's or a doctorate; is that right?</p> <p>3 A. That is correct.</p> <p>4 Q. Thank you. All right. So we may go</p> <p>5 through some of that in more depth later, but</p> <p>6 what is -- what positions have you held over</p> <p>7 time at MAS?</p> <p>8 A. PLM microscopist.</p> <p>9 Q. I have heard you referred to</p> <p>10 sometimes as an analyst.</p> <p>11 Is that the name of your</p> <p>12 position, is PLM microscopist the name of your</p> <p>13 position or what's the formal name of your</p> <p>14 position?</p> <p>15 A. To the best of my knowledge, it's</p> <p>16 PLM microscopist.</p> <p>17 Q. Okay. That's fine. And are you</p> <p>18 represented by counsel today?</p> <p>19 A. I am.</p> <p>20 Q. Okay. And is that your personal</p> <p>21 counsel? Was it provided to you by MAS?</p> <p>22 A. Provided by MAS.</p> <p>23 Q. Okay. And it says here that you</p> <p>24 have 34 years experience as a PLM</p> <p>25 microscopist, analyzing an average of 10,000</p>	<p style="text-align: right;">Page 12</p> <p>1 You have only become involved</p> <p>2 in litigation work within the last few years;</p> <p>3 is that right?</p> <p>4 A. That is correct.</p> <p>5 Q. Okay. And since becoming involved</p> <p>6 with litigation work, about what percentage of</p> <p>7 your time or your work at MAS relates to</p> <p>8 litigation -- is related to litigation?</p> <p>9 MR. LUDWIG: Objection to form.</p> <p>10 You can answer.</p> <p>11 THE WITNESS: I would say the</p> <p>12 majority of the time.</p> <p>13 BY MR. DUBIN:</p> <p>14 Q. Can you explain to me when and how</p> <p>15 you started to become involved with litigation</p> <p>16 work?</p> <p>17 A. I do not recall the exact year, but</p> <p>18 Dr. Longo asked me to start taking a look at</p> <p>19 amphiboles in talc samples.</p> <p>20 Q. And so you started -- they asked you</p> <p>21 to take a look by PLM for amphiboles in talc</p> <p>22 samples; is that right?</p> <p>23 A. That is right.</p> <p>24 Q. Okay. Did you have any discussion</p> <p>25 at that time about whether you should also</p>
<p style="text-align: right;">Page 11</p> <p>1 samples per year.</p> <p>2 When you say that, are most of</p> <p>3 the samples asbestos samples or is that a</p> <p>4 variety of different types of PLM work?</p> <p>5 A. Most of those were standard asbestos</p> <p>6 samples.</p> <p>7 Q. Okay. And so is it correct to say</p> <p>8 that your general job duties at MAS is just</p> <p>9 PLM microscopy?</p> <p>10 A. That is correct.</p> <p>11 Q. Do you do any other type of</p> <p>12 microscopy work at MAS?</p> <p>13 A. I had done some phase contrast.</p> <p>14 Q. No transmission electron microscopy;</p> <p>15 is that right?</p> <p>16 A. No, sir.</p> <p>17 Q. Okay. And do you know approximately</p> <p>18 what percentage of your time at MAS is spent</p> <p>19 performing work related to litigation?</p> <p>20 MR. LUDWIG: Objection to form.</p> <p>21 BY MR. DUBIN:</p> <p>22 Q. You can respond.</p> <p>23 A. Just the last few years.</p> <p>24 Q. Okay. So let me make sure I</p> <p>25 understand what you're saying.</p>	<p style="text-align: right;">Page 13</p> <p>1 look for chrysotile?</p> <p>2 A. Not that I recall.</p> <p>3 Q. Okay. Did you ask why you were only</p> <p>4 being -- being asked to look for amphiboles at</p> <p>5 that time?</p> <p>6 A. Not that I recall.</p> <p>7 Q. Okay. When you typically perform a</p> <p>8 PLM analysis, let's say, before you became</p> <p>9 involved in this litigation work, when you</p> <p>10 were examining a sample, would you typically</p> <p>11 look for both chrysotile and for amphiboles?</p> <p>12 A. In the standard samples, that is</p> <p>13 correct.</p> <p>14 Q. So you -- when you first became</p> <p>15 involved with looking at, let's say, talcum</p> <p>16 powder samples, why didn't you continue to</p> <p>17 follow that protocol and look for both</p> <p>18 amphibole and chrysotile?</p> <p>19 MR. LUDWIG: Objection to form.</p> <p>20 THE WITNESS: At that time it</p> <p>21 was basically just for the amphiboles. I was</p> <p>22 not asked to look for the chrysotile.</p> <p>23 BY MR. DUBIN:</p> <p>24 Q. Okay. And at some point you were</p> <p>25 asked to start looking for chrysotile in</p>

<p style="text-align: right;">Page 14</p> <p>1 cosmetic talc samples; is that right?</p> <p>2 A. I was asked to see what I could find</p> <p>3 other than the amphiboles.</p> <p>4 Q. Okay. And do you recall when</p> <p>5 approximately that was?</p> <p>6 A. I do not recall.</p> <p>7 Q. Prior to becoming involved with</p> <p>8 litigation work in the last several years, had</p> <p>9 you ever previously examined talc, whether</p> <p>10 industrial or cosmetic, for the presence of</p> <p>11 asbestos by PLM?</p> <p>12 A. Not that I recall.</p> <p>13 Q. Okay. When was the first time you</p> <p>14 recall being involved with the testing of talc</p> <p>15 at MAS, irrespective of whether it was</p> <p>16 cosmetic or industrial?</p> <p>17 MS. O'DELL: Would you repeat</p> <p>18 the question, please?</p> <p>19 BY MR. DUBIN:</p> <p>20 Q. Sure. When was the first time you</p> <p>21 recall becoming involved with the testing of</p> <p>22 talc for asbestos at MAS, irrespective of</p> <p>23 whether it was cosmetic talc or industrial</p> <p>24 talc?</p> <p>25 A. As I recall, it was somewhere around</p>	<p style="text-align: right;">Page 16</p> <p>1 A. Ceiling tiles, joint compounds,</p> <p>2 roofing, putties, floor tiles. A whole</p> <p>3 spectrum of different types of building</p> <p>4 materials.</p> <p>5 Q. And so do you recall being able to</p> <p>6 identify chrysotile by PLM in products such as</p> <p>7 joint compounds and floor tiles?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And do you know what type or types</p> <p>10 of chrysotile asbestos -- well, let me ask you</p> <p>11 a different question.</p> <p>12 Do you recall any of the brand</p> <p>13 names of the joint compounds that you looked</p> <p>14 at?</p> <p>15 A. I don't recall any brand names being</p> <p>16 given by the clients that sent the samples in.</p> <p>17 Q. Do you know whether any of those</p> <p>18 joint compounds or floor tiles would have</p> <p>19 contained Calidria asbestos?</p> <p>20 A. Not that I recall; however, I did at</p> <p>21 one point come to the understanding that</p> <p>22 Calidria had been used in some of the floor</p> <p>23 tiles.</p> <p>24 Q. Okay. And you were able to identify</p> <p>25 chrysotile in those floor tiles using PLM?</p>
<p style="text-align: right;">Page 15</p> <p>1 2018.</p> <p>2 Q. Have you looked at both industrial</p> <p>3 and cosmetic talc by PLM for the presence of</p> <p>4 asbestos?</p> <p>5 A. I don't recall industrial.</p> <p>6 Q. Okay. Do you recall when the first</p> <p>7 time was that you used -- and we'll talk more</p> <p>8 about what this means -- but a 1.550</p> <p>9 refractive index oil to examine talc,</p> <p>10 irrespective of whether it's cosmetic or</p> <p>11 industrial talc?</p> <p>12 A. 1.550 has always been the oil used</p> <p>13 since doing standard things or standard</p> <p>14 samples, I should say.</p> <p>15 Q. So over -- but do you recall when</p> <p>16 the first time you used that oil to examine</p> <p>17 talc was?</p> <p>18 A. I don't recall exactly.</p> <p>19 Q. Okay. You indicated before -- we</p> <p>20 talked about the fact that you had experience</p> <p>21 as a PLM microscopist looking at many</p> <p>22 different samples over your career.</p> <p>23 Can you tell me what type or</p> <p>24 types of asbestos-containing products you</p> <p>25 recall examining by PLM over your history?</p>	<p style="text-align: right;">Page 17</p> <p>1 A. Yes, sir.</p> <p>2 Q. All right. We'll talk a little bit</p> <p>3 more about that later.</p> <p>4 Are you the -- how many PLM</p> <p>5 analysts have -- during the time you have been</p> <p>6 there, have typically been employed by MAS?</p> <p>7 A. I do not know exactly how many.</p> <p>8 Q. Were there others besides you?</p> <p>9 A. There were.</p> <p>10 Q. Okay. Let's say within the last</p> <p>11 three years, how many other PLM analysts do</p> <p>12 you recall working at MAS?</p> <p>13 A. One other besides myself.</p> <p>14 Q. And who was that?</p> <p>15 A. That was Christopher Dubois.</p> <p>16 MR. LUDWIG: Mr. Dubin, can I</p> <p>17 ask you a question? Are you finished with the</p> <p>18 resume? Because it's still up on the screen.</p> <p>19 I didn't know if you were --</p> <p>20 MR. DUBIN: We can pull it down</p> <p>21 for now; that's fine.</p> <p>22 BY MR. DUBIN:</p> <p>23 Q. And was that individual trained in</p> <p>24 PLM dispersion staining analysis?</p> <p>25 A. Yes, sir.</p>

<p style="text-align: right;">Page 18</p> <p>1 Q. Was there anything about his 2 training that would lead you to believe he 3 wasn't trained to look for chrysotile by PLM? 4 MR. LUDWIG: Objection to form; 5 calls for speculation. 6 BY MR. DUBIN: 7 Q. To your knowledge. 8 A. I do not recall. 9 Q. Okay. We'll come back to some 10 background later, but what did you do to 11 prepare for your deposition today? 12 A. I had a few sessions with 13 Mr. Ludwig. 14 Q. Anything else? Did you speak to 15 anybody else in preparation for your 16 deposition? 17 A. Ms. O'Dell. 18 Q. Okay. How about Dr. Longo? 19 A. Dr. Longo has been very busy the 20 last couple of weeks or so and I have not had 21 an opportunity to sit down and talk with him. 22 Q. Okay. Did you review any materials 23 to prepare for your deposition? 24 A. I did review the reports by Dr. Su 25 and Dr. Wylie.</p>	<p style="text-align: right;">Page 20</p> <p>1 number is CX-6 for pulling it up. It's a 2 report, dated February 24, 2020, related to 3 Zimmerman, the Zimmerman report. 4 (Exhibit 2 marked for 5 identification.) 6 BY MR. DUBIN: 7 Q. I don't know that you -- whether you 8 personally recall. 9 Do you recall this being the 10 first time you looked at cosmetic talc from 11 Johnson &amp; Johnson by PLM for the presence of 12 chrysotile? 13 A. I don't recall. 14 Q. Okay. We'll look at that report 15 some, but before I do that, I want to look at 16 something else. 17 Did you become aware at some 18 point that the FDA had reported a positive 19 finding for chrysotile by TEM in a bottle of 20 Johnson &amp; Johnson? 21 MR. LUDWIG: Objection to form. 22 Just for the record, Mr. Hess 23 is a fact witness that we produced because of 24 Court Order. He is not here to opine on 25 expert issues or hearsay issues.</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. Okay. Did you review any of your 2 own PLM analysis? 3 A. I did not go back over and review 4 any of the PLM analysis. 5 Q. How are you compensated at MAS? Are 6 you a salaried employee? 7 A. Currently, I am hourly. 8 Q. Okay. How about before you -- 9 before you took the recent break and became a 10 consultant? Were you salaried at that time? 11 A. I was. 12 Q. Do you -- in your current structure, 13 do you receive bonuses? 14 A. No, sir. 15 Q. How about before, when you were a 16 salaried employee? Did you receive bonuses? 17 A. A long time ago the company used to 18 have an annual bonus that they would give out, 19 but that has not been in place for many years. 20 MR. DUBIN: Okay. I'm going to 21 mark as the next exhibit -- and start to get 22 into a little bit of substance -- what I 23 understand to be the first report that MAS 24 issued claiming to find chrysotile by PLM, and 25 that will be exhibit 2, internal reference</p>	<p style="text-align: right;">Page 21</p> <p>1 MR. DUBIN: I don't know what 2 you're saying, but I am sure I disagree with 3 it. So let's just see how it goes with 4 individual questions. Because I am definitely 5 going to be asking him about his work. 6 MR. LUDWIG: You're asking 7 about FDA analysis and so I am going to object 8 to the form. 9 MR. DUBIN: Okay. Well, you 10 can object if you like, but you can respond. 11 Thank you. 12 BY MR. DUBIN: 13 Q. Did you become aware of that at some 14 point? 15 A. I am aware of that. 16 Q. Okay. Do you recall how you became 17 aware of that? 18 A. I don't recall exactly. 19 Q. Do you recall ever reporting 20 chrysotile in any Johnson &amp; Johnson talc 21 samples prior to that FDA finding? 22 A. I do not. 23 Q. Now, what -- what type of refracted 24 index oil would you use traditionally to look 25 for fibrous talc by PLM?</p>

<p style="text-align: right;">Page 22</p> <p>1 A. 1.550.</p> <p>2 Q. Would there be any difference in</p> <p>3 your prep method in the way that you would</p> <p>4 have traditionally looked for fibrous talc</p> <p>5 versus chrysotile asbestos in 1.550?</p> <p>6 A. It would be no different in method</p> <p>7 of preparation.</p> <p>8 Q. It makes no difference to the method</p> <p>9 of preparation? Is that what you said?</p> <p>10 A. No. I said there is no difference</p> <p>11 in preparation between the two types of</p> <p>12 analyses.</p> <p>13 Q. All right. And so I want to ask you</p> <p>14 about another report before we go forward, one</p> <p>15 that was issued before Zimmerman; that will be</p> <p>16 exhibit 3. It's a February 1, 2019 report</p> <p>17 entitled: MAS Second Supplemental Report.</p> <p>18 Let's pull that up for a second.</p> <p>19 (Exhibit 3 marked for</p> <p>20 identification.)</p> <p>21 BY MR. DUBIN:</p> <p>22 Q. This is a report that was issued by</p> <p>23 MAS prior to the FDA finding.</p> <p>24 It's entitled: An Analysis of</p> <p>25 Johnson &amp; Johnson Historical Product</p>	<p style="text-align: right;">Page 24</p> <p>1 highlight it.</p> <p>2 MS. O'DELL: If you can't see</p> <p>3 it, Dr. -- excuse me. If you can't see it,</p> <p>4 Mr. Hess, please let us know.</p> <p>5 MR. DUBIN: Jake, can you put</p> <p>6 these things in chat, too?</p> <p>7 MR. PLACITELLA: Well, I want</p> <p>8 the opportunity to look at the document before</p> <p>9 you start asking questions about it.</p> <p>10 MR. LUDWIG: I mean, the report</p> <p>11 speaks for --</p> <p>12 MR. DUBIN: (Inaudible.)</p> <p>13 MR. LUDWIG: -- themselves --</p> <p>14 indicating one question or -- so the whole</p> <p>15 thing speaks for itself, Paul. I guess his</p> <p>16 only --</p> <p>17 MR. DUBIN: Okay. This is a</p> <p>18 long speaking objection, it's improper, and I</p> <p>19 am going to -- I am trying to show him things</p> <p>20 to be able to ask him a question about it.</p> <p>21 We can put these things in</p> <p>22 chat, but I am not pausing at every question</p> <p>23 to wait for you to read a 100-page report. So</p> <p>24 that's just not happening. We're going to --</p> <p>25 MS. O'DELL: Well, it will</p>
<p style="text-align: right;">Page 23</p> <p>1 Containers and Imerys' Historical Railroad Car</p> <p>2 Samples from the 1960s to the early 2000s, for</p> <p>3 Amphibole Asbestos, and if we --</p> <p>4 MS. O'DELL: Morty, could you</p> <p>5 put the whole document on the screen so it can</p> <p>6 be seen? I am only seeing the first part.</p> <p>7 MR. DUBIN: I mean, I am going</p> <p>8 to move around the document. We can try to</p> <p>9 adjust so you can see the full size.</p> <p>10 Can you see it now?</p> <p>11 MS. O'DELL: Yes. If you can</p> <p>12 maybe make it a bit bigger? Because I am</p> <p>13 looking for the date on that because I can't</p> <p>14 see it.</p> <p>15 MR. DUBIN: It's dated February</p> <p>16 1, 2019.</p> <p>17 MS. O'DELL: Thank you.</p> <p>18 BY MR. DUBIN:</p> <p>19 Q. And if we go to page 2, you can see</p> <p>20 here that it relates to 72 J&amp;J and</p> <p>21 Imerys-supplied historical cosmetic talcum</p> <p>22 powder containers, samples, and samples from</p> <p>23 the 1960s, 1970s, 1980s, 1990s, and early</p> <p>24 2000s.</p> <p>25 Do you see that? I can</p>	<p style="text-align: right;">Page 25</p> <p>1 happen if the witness needs it, Morty, and</p> <p>2 we'll go off the record if he needs --</p> <p>3 MR. DUBIN: I haven't -- I</p> <p>4 haven't asked a single question yet, other</p> <p>5 than whether he sees it. So we're not at --</p> <p>6 MS. O'DELL: Morty, I am not</p> <p>7 finished and you can let me finish.</p> <p>8 It's not fair to put a document</p> <p>9 on the screen without giving him the</p> <p>10 opportunity to see it. Thank you for putting</p> <p>11 it in the chat. He can pull it down in the</p> <p>12 chat and they will be printed if needed --</p> <p>13 MR. DUBIN: (Inaudible.)</p> <p>14 MS. O'DELL: -- examination.</p> <p>15 You could have sent the</p> <p>16 documents in hard copy had you chosen. You</p> <p>17 didn't do that; that's fine. We'll work</p> <p>18 around that, but he needs the opportunity to</p> <p>19 review the document.</p> <p>20 MR. DUBIN: If you guys want to</p> <p>21 go off record, he can read each time. I am</p> <p>22 not using my time to have him read a whole</p> <p>23 report when I haven't been able to ask a</p> <p>24 single question about it.</p> <p>25 So if you want to go off, off</p>

<p style="text-align: right;">Page 26</p> <p>1 record, and have him read the whole report, I  2 am happy to let him do that, or I can direct  3 him to the portions that I am going to ask  4 about. You choose. Because we can be here  5 all night. I don't care. So you tell me.  6 MR. LUDWIG: We're not going to  7 off the record, no. It sounds like --  8 MR. DUBIN: It is not going on  9 my time if he wants to read a 50-page document  10 that I haven't been able to ask a single  11 question about yet. This is not happening.  12 So you want to go off the  13 record and have him read this report or you  14 want me to ask him questions and then the  15 witness can tell me if there is something he  16 needs to read.  17 Those are your two options.  18 MS. O'DELL: You don't --  19 MR. PLACITELLA: The third  20 option is -- the third option is we're going  21 to call the Special Master. Because we have a  22 right to know what's in the document --  23 MR. DUBIN: It's in the  24 document --  25 MR. PLACITELLA: -- before you</p>	<p style="text-align: right;">Page 28</p> <p>1 get the Judge on the phone --  2 MR. DUBIN: -- get the Judge on  3 the line, we can get the Judge on the line.  4 Go ahead. Go ahead.  5 MR. PLACITELLA: Let's get the  6 judge on the phone.  7 MR. DUBIN: Fine.  8 THE COURT REPORTER: Would you  9 like to go off the record for a moment?  10 MR. DUBIN: Sure. We'll go off  11 the record.  12 VIDEOGRAPHER: The time is  13 9:32 a.m. We are off the record.  14 (Brief recess.)  15 (Conference with Special Master  16 Joel Schneider taken off the video  17 record.)  18 THE COURT: Am I looking at the  19 infamous Paul Hess?  20 THE WITNESS: You are, sir.  21 THE COURT: Mr. Hess, I have  22 read so much about you. I am delighted to  23 meet you in person.  24 MS. O'DELL: Judge Schneider,  25 here is the issue that we're facing and I</p>
<p style="text-align: right;">Page 27</p> <p>1 ask the question. So if that's how we're  2 going to proceed, by picking pieces of a  3 document that he hasn't seen for years and I  4 have never seen before, then we've got to get  5 the Judge on the phone now.  6 MR. DUBIN: Okay. We can do  7 whatever you want. You guys have been  8 complaining about this without me asking a  9 single question about the document. The  10 witness hasn't said he needs to look at  11 anything else. You're just being  12 obstructionists. I am going to --  13 MR. PLACITELLA: Well, let's  14 get the Judge on the phone.  15 MR. LUDWIG: He has not  16 reviewed the MAS reports. So --  17 MR. DUBIN: This is his work.  18 I am asking him about his work.  19 MS. O'DELL: This is the report  20 of Dr. Bill Longo and Mark Rigler. This is --  21 so --  22 MR. DUBIN: With his PLM work.  23 I am not arguing about it anymore. I am  24 asking the questions. If you want to --  25 MR. PLACITELLA: Well, let's</p>	<p style="text-align: right;">Page 29</p> <p>1 invite Mr. Placitella to add if I don't cover  2 something, but as you know, Mr. Hess is a fact  3 witness, he is not an expert, and he has done  4 work at MAS Lab for purposes of Dr. Longo  5 rendering his expert opinion.  6 He is being shown reports by  7 Dr. Longo and Rigler. He has not -- this  8 is -- he has no involvement in the preparation  9 of the reports. His work is an underlying  10 analyst and we object to Mr. Hess being  11 examined on the full scope of Dr. Longo's  12 reports, which are not his work.  13 And so we believe -- we just  14 got started a bit ago. We think this is going  15 to be sort of the mode of the deposition and  16 we need direction from the Court as to how  17 this should be approached.  18 MR. DUBIN: Just so I can --  19 MR. PLACITELLA: Could I  20 supplement that?  21 MS. O'DELL: Please.  22 MR. PLACITELLA: So my concern,  23 your Honor, is as follows. These are reports  24 from other cases. The witness either has  25 never seen them before or hasn't seen them for</p>



<p style="text-align: right;">Page 30</p> <p>1 many years.</p> <p>2 Questions are being asked about</p> <p>3 these reports that we have not been supplied</p> <p>4 in advance of the deposition. Sticking them</p> <p>5 in the chat now on a 30-page report from</p> <p>6 another case doesn't give counsel even an</p> <p>7 opportunity to determine whether the questions</p> <p>8 are taken out of context, are fair or even</p> <p>9 relevant. So we're not even in a position to</p> <p>10 phrase our objections appropriately.</p> <p>11 If they wanted to ask questions</p> <p>12 about these reports, they should have been</p> <p>13 sent long in advance of the deposition and we</p> <p>14 could have had a debate about it then, not</p> <p>15 now, when now they are going to claim every</p> <p>16 time Mr. Hess has to stop and look at the</p> <p>17 report, that somehow that counts -- it doesn't</p> <p>18 count on their time for completing this</p> <p>19 deposition.</p> <p>20 It's an unfair way to proceed.</p> <p>21 It was never contemplated by the Court and I</p> <p>22 am at a loss as to how to even address these</p> <p>23 circumstances. I mean, this is a tenuous</p> <p>24 deposition at best and now we're taking it</p> <p>25 into a whole different realm, which is</p>	<p style="text-align: right;">Page 32</p> <p>1 Counsel, go ahead. Now I know.</p> <p>2 MR. DUBIN: So I haven't even</p> <p>3 asked him a single question basically</p> <p>4 substantively yet before they decided that</p> <p>5 they needed to approach the Court. All I had</p> <p>6 done was put up one report and then I was</p> <p>7 trying to orient him on what samples we were</p> <p>8 talking about and then I was going to ask</p> <p>9 him -- because he did the PLM work for that</p> <p>10 report -- and I was going to ask him about the</p> <p>11 conclusions and the work that he did.</p> <p>12 And I made the entire report</p> <p>13 available for counsel and I even offered if</p> <p>14 they wanted to go off record and have the</p> <p>15 witness read the entire report if he felt it</p> <p>16 was necessary, but I didn't even get to ask a</p> <p>17 single question.</p> <p>18 Of course, they don't -- they</p> <p>19 didn't even wait to see what the examination</p> <p>20 was about other than, "Do you see here? This</p> <p>21 was about 72 samples of talc," and then they</p> <p>22 objected and we got the deposition shut down.</p> <p>23 So I don't really know what</p> <p>24 their complaint is. I am making materials</p> <p>25 available to him. I am asking him about the</p>
<p style="text-align: right;">Page 31</p> <p>1 completely unfair to counsel and the witness.</p> <p>2 MR. DUBIN: If I could briefly</p> <p>3 respond. Your Honor, I haven't asked --</p> <p>4 THE COURT: One second.</p> <p>5 MR. DUBIN: Sure.</p> <p>6 THE COURT: You represent the</p> <p>7 defendants, I assume?</p> <p>8 MR. DUBIN: Yeah.</p> <p>9 THE COURT: Who are who?</p> <p>10 MR. DUBIN: I am Morton Dubin.</p> <p>11 THE COURT: With what firm?</p> <p>12 MR. DUBIN: I am with King &amp;</p> <p>13 Spalding.</p> <p>14 THE COURT: And Mr. Hess is</p> <p>15 physically where?</p> <p>16 MR. DUBIN: He is in Atlanta.</p> <p>17 THE COURT: And is</p> <p>18 Mr. Placitella and Ms. O'Dell, are they both</p> <p>19 in their office or are they with Mr. Hess?</p> <p>20 MS. O'DELL: I am with the</p> <p>21 witness, Judge, in Atlanta.</p> <p>22 THE COURT: Okay.</p> <p>23 MS. O'DELL: Mr. Placitella is</p> <p>24 in New Jersey.</p> <p>25 THE COURT: Okay. All right.</p>	<p style="text-align: right;">Page 33</p> <p>1 work that he personally did, not about</p> <p>2 anything else in the report, and so I don't</p> <p>3 see what the objection is. It's a legitimate</p> <p>4 scope of inquiry.</p> <p>5 THE COURT: Can I ask a</p> <p>6 question? In the case, is there a deposition</p> <p>7 protocol that requires the production</p> <p>8 beforehand of exhibits that are going to be</p> <p>9 shown to a witness?</p> <p>10 MS. O'DELL: There is a</p> <p>11 deposition protocol and, your Honor, I do</p> <p>12 believe that we mainly follow that, just to be</p> <p>13 clear, more for an expert witness. There has</p> <p>14 been a three-day disclosure rule; that's not</p> <p>15 been followed in the instance of Mr. Hess</p> <p>16 since his deposition is a little bit more</p> <p>17 unique.</p> <p>18 And so, Judge, let me just also</p> <p>19 make clear, you know, as you know, in the</p> <p>20 first round in the multi-district litigation,</p> <p>21 the expert report that was at issue was the</p> <p>22 February 1, 2019 expert report involving</p> <p>23 historical samples that tested for amphibole</p> <p>24 asbestos; that's the report that was at issue</p> <p>25 in the Daubert hearing.</p>

<p style="text-align: right;">Page 34</p> <p>1 Dr. Longo has had a two-day 2 deposition on that report. Dr. Rigler was 3 examined. Dr. Longo was examined before Judge 4 Wolfson at the Daubert hearing and the Court 5 issued a ruling allowing the analysis from 6 that report. 7 What Mr. Dubin -- 8 MR. DUBIN: If I can -- 9 MS. O'DELL: -- Mr. Dubin put 10 up is the February 1, 2019 material, and as 11 you are so well aware, what's been at issue in 12 the proceedings since they have been restarted 13 in the MDL are new things and there are 14 reports that have been disclosed by Dr. Longo 15 that relate to the analysis of talc for 16 chrysotile involving PLM. 17 And that is -- for those 18 reports that have been disclosed, to the 19 degree Mr. Hess was involved and worked on the 20 underlying analysis, we understand the Court 21 has allowed this deposition and that we'll go 22 forward, but for the defendants to try to go 23 back, replot 2019 round in a report that's not 24 involved is not fair. 25 For them to inquire of things</p>	<p style="text-align: right;">Page 36</p> <p>1 regarding this new method; that's the first 2 thing. 3 The second thing is, the 4 deposition was only limited to Mr. Hess' 5 personal involvement. Because the defendants 6 were making the argument -- not in these 7 words, but, in essence, that it was Mr. Hess 8 that was making these ultimate decisions and 9 not Dr. Longo. 10 So the questions have to be 11 limited to only what Mr. Hess did, his tests, 12 his personal observations. The deposition is 13 not to get Mr. Hess' opinion on what somebody 14 else did or what somebody else opines. 15 Mr. Hess is there to testify 16 about his firsthand personal knowledge about 17 these -- this new testing method; that -- that 18 is precisely why Mr. Hess' deposition was 19 permitted. It was not permitted to go over 20 ground that was covered previously in the 21 case, the TEM tests, if I am -- 22 MR. DUBIN: Right. 23 THE COURT: -- right or any of 24 the tests before this new method. 25 And if I remember right, I am</p>
<p style="text-align: right;">Page 35</p> <p>1 that he wasn't involved in, including the 2 actual text of the report, is not fair. His 3 work was the bench work and the 4 photomicrographs and to go beyond that, we 5 believe, is objectionable and we ask the Court 6 to not allow it. 7 THE COURT: Can I jump in here? 8 Because I am very familiar with the issues. 9 And the reason why leave was granted to the 10 defendants to take Mr. Hess' deposition was 11 based on the arguments that they made in their 12 briefs. 13 Ms. O'Dell is correct that the 14 subject matter of the deposition should only 15 be limited to what I call -- and I'm not quite 16 sure if the defendants used this word -- this 17 new method. And if I remember right, even in 18 my decision I set forth -- there was, like, a 19 date range, if I remember right. I don't have 20 it in front of me. It started in 2020 and 21 maybe went to 2024. 22 And I specifically remember 23 there was an exhibit that may have been 24 duplicated in different versions that set 25 forth precisely the tests that were at issue</p>	<p style="text-align: right;">Page 37</p> <p>1 obviously aware that Judge Wolfson had 2 stricken some of the tests in the original 3 Daubert opinion, and I think that the argument 4 is going to be that with this new method, it 5 was not subject to the old order and, 6 presumably, it will be the subject of a new 7 Daubert order. 8 But those parameters of why 9 Mr. Hess' deposition was permitted, those 10 should be the parameters of this deposition. 11 I hope that helps. 12 MR. DUBIN: We don't disagree 13 with that at all. The report I am asking him 14 about is the first time that he is using this 15 specific method to examine Johnson &amp; Johnson, 16 as I will show when I go to the report. 17 In that report he begins to use 18 1.550 oil for the first time, which is the way 19 he is looking for chrysotile. In that report 20 is the first time that he starts to do that 21 and look at Johnson &amp; Johnson. 22 And so that was what I was 23 going to ask him about, is about his personal 24 work using that method at that time, which 25 leads then into the first reports for</p>

<p style="text-align: right;">Page 38</p> <p>1 chrysotile. 2 And so this is all about that 3 topic. I am not going into the TEM work. I 4 am not going into the PLM work that he did for 5 amphibole. 6 I am just asking him about this 7 kind of analysis that is the subject of the 8 entire deposition and this report, but I 9 didn't even get to get a single question in 10 before we ended up having to call your Honor, 11 I suppose. 12 THE COURT: Counsel, what you 13 were going to ask Mr. Hess about, is that one 14 of the tests that was on that list that 15 hopefully you know what I was referring? 16 MR. DUBIN: Your Honor, I will 17 go ahead and just explain to everybody, 18 although I really feel like I should be able 19 to ask the witness these questions, but what 20 we're going to see is that at this point, 21 before -- so at some point the FDA finds by 22 TEM chrysotile in one bottle of Johnson &amp; 23 Johnson and after that time MAS starts to 24 report chrysotile by PLM basically every time 25 they look at it.</p>	<p style="text-align: right;">Page 40</p> <p>1 lay this as a foundation from the prior report 2 when some of that work was not his first is 3 improper and we object to that. I mean, the 4 2019 report is off the table. 5 MR. DUBIN: I am only asking -- 6 MR. PLACITELLA: I would just 7 add to that, to be fair to everyone, you know, 8 popping a report up that's X period of -- no 9 one has looked at for four or five years, you 10 know, in this context and start asking 11 questions, it's just not proper. 12 We have -- we can't -- we don't 13 know the context. He has taken little lines. 14 He has highlighted one line or two lines in a 15 report and then says, Well, we put the report 16 in chat. Go, have it. 17 Well, that's not fair. The 18 deposition today is supposed to be about the 19 report here at issue, nothing beyond that 20 report, and that's the -- I don't know what 21 else is coming; that's why we stopped it. 22 Are they going to pull out some 23 other report from some other case? I don't 24 know, but we've got to have some parameters of 25 what we're doing here.</p>
<p style="text-align: right;">Page 39</p> <p>1 What we're going to see is in 2 this report they're -- it's before the FDA 3 finding, they are using the exact same 4 methodology to look at the talc, and they do 5 not report chrysotile. 6 THE COURT: Counsel, what I'm 7 just concerned about is, you can ask him about 8 the tests using the new method. You can't -- 9 the purpose of the deposition is not to say, 10 Why did this person not find chrysotile and 11 you found chrysotile? 12 Ask him about his tests and 13 what he did and how he did it. 14 MR. DUBIN: He did the work on 15 both. I am asking about his work. 16 MS. O'DELL: Your Honor, we 17 would object. This is the 2019 report. It 18 was for amphiboles. Much of that work was not 19 done at MAS, it was done by another lab, and 20 so we object as that was fully covered by the 21 last proceedings. 22 For the new material, as the 23 Court has said, for his work, if they want to 24 ask him about it and ask him what oil he used, 25 that's fair game, but to go back and somehow</p>	<p style="text-align: right;">Page 41</p> <p>1 THE COURT: Counsel, I am 2 persuaded by plaintiffs' argument. Really, 3 this shouldn't be that difficult an issue. 4 The boundaries of this deposition were set 5 forth in the requests and my Order. 6 It's just about the tests that 7 he did, how he did it, his observations. He 8 is not there to answer questions about why did 9 they get the result in a 2019 test and a 10 different result in a later test; that's not 11 why he is there. 12 He is there to talk from his 13 personal observation about the new test; 14 that's it. 15 MR. DUBIN: But I just -- all I 16 am asking him about is his own work, doing it 17 the exact same way, why he came to a 18 conclusion -- different conclusion one time 19 versus the other, his own personal PLM work. 20 I am not asking him about 21 anybody else's work, asking him to offer 22 opinions about anybody else's work. I am just 23 asking him about what he did. 24 THE COURT: Counsel, if it's 25 not one of the tests on this exhibit list that</p>



<p style="text-align: right;">Page 42</p> <p>1 I referred to -- I know I referred to it 2 during oral argument. I don't recollect if I 3 referred to it in my decision. 4 If it's not one of those tests, 5 it's off limits. That's not the purpose of 6 the deposition. 7 MR. DUBIN: I am only asking 8 him about his PLM work in 1.550 and 1.560, 9 which is his chrysotile -- method for looking 10 for chrysotile, which is the subject of the 11 deposition. I'm not asking anything about any 12 PLM work. 13 THE COURT: Counsel, I don't 14 have that exhibit, that list in front of me, 15 but I have a feeling you know what I am 16 referring to, it would -- I believe it was an 17 exhibit to the two reports that the defendants 18 submitted. 19 And, you know, one of the 20 arguments for why the exception was denied was 21 because those experts prepared detailed 22 reports rebutting the plaintiffs' experts and 23 in those reports they attached as exhibits the 24 list of the samples that are at issue 25 regarding this new method. That's it. That's</p>	<p style="text-align: right;">Page 44</p> <p>1 Mr. Hess is only going to testify about his 2 personal observations. To me that's pretty -- 3 the boundaries are pretty clear. So I don't 4 know what else I can say. 5 MR. DUBIN: I understand, your 6 Honor. Again, I believe I am trying to stay 7 within that by asking him about his personal 8 observations of this material in 1.550 and 9 1.560 oil, but I understand. I will skip this 10 report. 11 I would like to be able to ask 12 him about differences in his images. Because 13 one of the big topics here is images. If they 14 decide to try to shut it down later when I do 15 it, I guess we'll take it up then, but we'll 16 see. I need to understand how -- what his 17 microscope setups are and whether he is 18 changing them and the like. 19 THE COURT: As long as it's 20 limited to the specific tests at issue that 21 are on that exhibit list. The exhibits are 22 attached to your expert reports, Counsel. So 23 you should have those at your fingertips. 24 Those were the tests that were 25 in the motion that the argument was that new</p>
<p style="text-align: right;">Page 43</p> <p>1 it. Those are the tests at issue. 2 MR. DUBIN: I understand that, 3 your Honor, and that's why as part of asking 4 about those conclusions, I need to understand 5 what changed between the two times he looked 6 at this with 1.550 oil to understand his 7 conclusions. 8 THE COURT: Well, if you're 9 asking about that, my ruling would be that's 10 off limits; that's not the purpose of this 11 deposition, not to compare old tests to new 12 tests. 13 The purpose of this deposition 14 is to ask him about his personal observations 15 regarding the new test; that's what was in the 16 defendant's papers. They didn't say anything 17 about asking him to compare old to new. 18 That's my ruling. If the 19 defendants think the questioning is going out 20 of those boundaries, instruct the witness not 21 to answer. We'll look at the transcript and 22 we'll make a ruling on a more fulsome record, 23 but I don't know what else I can say, Counsel. 24 It really should be a pretty 25 easy deposition. You have the tests at issue.</p>	<p style="text-align: right;">Page 45</p> <p>1 method was used and they found chrysotile 2 where they didn't previously find it; that's 3 the boundary of this deposition. Okay. 4 So I am in a mediation today, 5 but if you need me, send me an e-mail or a 6 text, and when I am available, I will get back 7 on the Zoom. Thank you, Counsel. 8 MS. O'DELL: Thank you, your 9 Honor. 10 MR. LUDWIG: Thank you, Judge. 11 MR. DUBIN: So we'll keep that 12 as an exhibit, as a proffer for the record. 13 (Break held off the record.) 14 VIDEOGRAPHER: The time is 15 10:17 a.m. We are back on the record. 16 BY MR. DUBIN: 17 Q. In terms of your background, when 18 did you start performing PLM dispersion 19 staining analysis? 20 A. 1989. 21 Q. That was when you took the course at 22 McCrone? 23 A. That is correct. 24 Q. Can you tell me a little bit about 25 that course? How long did it last? What were</p>

<p style="text-align: right;">Page 46</p> <p>1 you trained in?</p> <p>2 A. It lasted a week.</p> <p>3 Q. Okay.</p> <p>4 A. And we were trained to utilize the</p> <p>5 dispersion staining method to identify the</p> <p>6 various asbestos forms or minerals.</p> <p>7 MR. DUBIN: And if we can call</p> <p>8 up Hess slide 2. I will make a copy of it</p> <p>9 exhibit 4.</p> <p>10 (Exhibit 4 marked for</p> <p>11 identification.)</p> <p>12 BY MR. DUBIN:</p> <p>13 Q. And do you know what this is that</p> <p>14 we're looking at here in the image?</p> <p>15 A. Well, it's stated on the matrix,</p> <p>16 reference chrysotile.</p> <p>17 Q. And when you taught -- took the</p> <p>18 course at McCrone, were you taught that</p> <p>19 chrysotile should look magenta in parallel?</p> <p>20 A. We were.</p> <p>21 Q. And are you aware that McCrone has</p> <p>22 studied different types of chrysotile,</p> <p>23 including Calidria?</p> <p>24 MR. LUDWIG: Objection to form.</p> <p>25 THE WITNESS: I am not aware of</p>	<p style="text-align: right;">Page 48</p> <p>1 MR. KEESTER: Sorry, Morty.</p> <p>2 It's hard to print a single slide while</p> <p>3 we're -- I'm showing it.</p> <p>4 MR. DUBIN: Okay. Again, we'll</p> <p>5 put them in chat so that you have them later,</p> <p>6 but I don't want to take them off screen while</p> <p>7 we're doing this. It's a single slide. You</p> <p>8 can see it on the screen.</p> <p>9 BY MR. DUBIN:</p> <p>10 Q. All right. So --</p> <p>11 MS. O'DELL: We can't see it.</p> <p>12 Mr. Hess would, please, request a copy.</p> <p>13 BY MR. DUBIN:</p> <p>14 Q. The next step after you have made a</p> <p>15 judgment about what color you're looking at is</p> <p>16 to figure out what wavelength of light that</p> <p>17 is, right?</p> <p>18 A. That is correct.</p> <p>19 Q. And then you use some tables to</p> <p>20 convert that into a refractive index?</p> <p>21 A. That is correct. We used Dr. Su's</p> <p>22 tables.</p> <p>23 Q. And then, ultimately, those numbers</p> <p>24 can be used to derive a birefringence number,</p> <p>25 correct?</p>
<p style="text-align: right;">Page 47</p> <p>1 what Dr. McCrone or what McCrone had studied.</p> <p>2 MS. O'DELL: (Inaudible.)</p> <p>3 MR. DUBIN: That would be</p> <p>4 exhibit 4.</p> <p>5 MS. O'DELL: Would you, please,</p> <p>6 download it in the chat?</p> <p>7 MR. DUBIN: Sure. Just, Jake,</p> <p>8 whenever we do exhibits, let's just put them</p> <p>9 in chat.</p> <p>10 BY MR. DUBIN:</p> <p>11 Q. And so we'll walk through just so we</p> <p>12 can understand the basic process of dispersion</p> <p>13 staining.</p> <p>14 The first step after you have</p> <p>15 put the slide -- prepared the slide and put it</p> <p>16 on the microscope, the first step is for the</p> <p>17 analyst to make a judgment about what color</p> <p>18 they are seeing, right?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. And then after you make a</p> <p>21 judgment about what color you're seeing --</p> <p>22 MR. DUBIN: Jake, there is some</p> <p>23 weird stuff on the screen. Can you take that</p> <p>24 off screen, please, or just put the slide</p> <p>25 back?</p>	<p style="text-align: right;">Page 49</p> <p>1 A. Yes, sir.</p> <p>2 Q. Okay. And can you define for me</p> <p>3 what an alpha refractive index is?</p> <p>4 A. That would be your length slow --</p> <p>5 length fast direction.</p> <p>6 Q. Okay. How about a gamma refractive</p> <p>7 index? Do you know what a gamma refractive</p> <p>8 index is?</p> <p>9 A. That would be your length slow</p> <p>10 direction. It's -- normally for chrysotile,</p> <p>11 that would be parallel.</p> <p>12 Q. Okay. Can your alpha refractive</p> <p>13 index ever be higher than your gamma</p> <p>14 refractive index?</p> <p>15 A. Only if a mineral is negative in</p> <p>16 elongation.</p> <p>17 THE COURT REPORTER: Can you,</p> <p>18 please, repeat the answer.</p> <p>19 THE WITNESS: Only if the</p> <p>20 mineral is negative in elongation.</p> <p>21 BY MR. DUBIN:</p> <p>22 Q. All right. What does the refractive</p> <p>23 index of a mineral measure?</p> <p>24 A. It measures, basically, the</p> <p>25 difference in the light path as it passes</p>

<p style="text-align: right;">Page 50</p> <p>1 through the oil and particle edge. They</p> <p>2 interface.</p> <p>3 Q. What properties of a mineral</p> <p>4 determine its refractive index?</p> <p>5 A. Generally, the chemical, density.</p> <p>6 Q. Anything else?</p> <p>7 MR. LUDWIG: Objection to form.</p> <p>8 THE WITNESS: I don't recall</p> <p>9 off the top of my head.</p> <p>10 BY MR. DUBIN:</p> <p>11 Q. What is birefringence?</p> <p>12 A. Birefringence is the difference</p> <p>13 between the mineral's highest refractive</p> <p>14 indices and its lowest refractive indices.</p> <p>15 Q. Okay. What do you mean by -- what</p> <p>16 do you mean by highest refractive indices,</p> <p>17 first?</p> <p>18 A. The highest refractive index for the</p> <p>19 mineral.</p> <p>20 Q. And so if a mineral is displaying</p> <p>21 more than one color, how do you determine what</p> <p>22 the highest refractive index is?</p> <p>23 MR. LUDWIG: Objection to form.</p> <p>24 THE WITNESS: One would</p> <p>25 normally look for the wavelength that would be</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. But is it the difference between the</p> <p>2 highest and the lowest refractive indices? Is</p> <p>3 that what maximum difference means?</p> <p>4 A. Can you rephrase that just a little</p> <p>5 bit?</p> <p>6 Q. Sure. I mean, if you get -- if</p> <p>7 you're saying that alpha and gamma are defined</p> <p>8 by highest and lowest refractive indices, the</p> <p>9 maximum difference means the difference</p> <p>10 between that highest and that lowest</p> <p>11 refractive index, right?</p> <p>12 A. That would be the way I would see</p> <p>13 it, yes.</p> <p>14 Q. Okay. And do you know -- if we go</p> <p>15 back to that slide that was marked as</p> <p>16 exhibit 4.</p> <p>17 MR. DUBIN: It could also be</p> <p>18 slide 10. Whatever makes it easier for you,</p> <p>19 Jake, to call it up.</p> <p>20 BY MR. DUBIN:</p> <p>21 Q. Do you know what causes chrysotile</p> <p>22 to appear magenta in parallel?</p> <p>23 A. It's the angle of the fraction as</p> <p>24 the light passes up at the oil-particle</p> <p>25 interface.</p>
<p style="text-align: right;">Page 51</p> <p>1 the highest of the mineral in the gamma</p> <p>2 direction and --</p> <p>3 BY MR. DUBIN:</p> <p>4 Q. And -- sorry. Go ahead.</p> <p>5 A. And then apply that to the charts.</p> <p>6 Q. Okay. How do you -- and then how do</p> <p>7 you determine what the lowest refractive index</p> <p>8 is if a mineral is displaying more than one</p> <p>9 color?</p> <p>10 A. You put it into the alpha direction.</p> <p>11 For chrysotile, that would be perpendicular.</p> <p>12 Q. Is it correct that the birefringence</p> <p>13 is the quantitative expression of the maximum</p> <p>14 difference in refractive index due to double</p> <p>15 refraction?</p> <p>16 MR. LUDWIG: Objection to form.</p> <p>17 THE WITNESS: That is my</p> <p>18 understanding.</p> <p>19 BY MR. DUBIN:</p> <p>20 Q. And what do you understand maximum</p> <p>21 difference in that context to mean?</p> <p>22 A. For any particular particle, it</p> <p>23 would be what my examination leads me to</p> <p>24 determine to be the refractive indices in most</p> <p>25 gamma and alpha direction.</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. And what creates the color magenta?</p> <p>2 What creates -- what causes you to see the</p> <p>3 color magenta specifically?</p> <p>4 MS. O'DELL: I object to the</p> <p>5 question to the degree it calls for an expert</p> <p>6 opinion and it relates not to the testing</p> <p>7 analysis that Mr. Hess has done on a specific</p> <p>8 sample, which is the purpose of this</p> <p>9 deposition. Asking expert opinion is not the</p> <p>10 purpose of this deposition.</p> <p>11 MR. LUDWIG: The Court has</p> <p>12 already ordered on that. So this doesn't have</p> <p>13 anything to do with the specific exam or the</p> <p>14 scope on which the Court just advised the</p> <p>15 parties to stay within. I am objecting to the</p> <p>16 form of the question.</p> <p>17 MR. DUBIN: I will lay a</p> <p>18 further foundation for it.</p> <p>19 BY MR. DUBIN:</p> <p>20 Q. We are going to be talking about</p> <p>21 your work identifying chrysotile in Johnson &amp;</p> <p>22 Johnson, but, typically, when MAS was</p> <p>23 identifying chrysotile in Johnson &amp; Johnson,</p> <p>24 it was -- what was being called chrysotile was</p> <p>25 yellow in parallel, right?</p>

<p style="text-align: right;">Page 54</p> <p>1 MR. LUDWIG: Same objection.  2 That is exactly what the Court  3 ruled upon. So objection.  4 MR. DUBIN: No. Those are the  5 reports at issue, which the Court said we  6 could ask about.  7 MS. O'DELL: And if you would  8 like to ask Mr. Hess about specific reports,  9 he is here and prepared to respond to your  10 questions, but asking for expert opinion is  11 beyond the scope of what Judge Schneider  12 established for this deposition and we'll  13 instruct the witness not to answer.  14 MR. LUDWIG: I instruct the  15 witness not to answer that question.  16 BY MR. DUBIN:  17 Q. In your reports identifying  18 chrysotile in Johnson &amp; Johnson, what color  19 are the particles that you're calling  20 chrysotile typically in parallel?  21 MR. LUDWIG: Objection to form.  22 THE WITNESS: The colors that I  23 utilize to determine the wavelength are at the  24 edge of the particle and not in the center.  25 BY MR. DUBIN:</p>	<p style="text-align: right;">Page 56</p> <p>1 MR. DUBIN: All right. Let's  2 take this down. We'll come back to it when we  3 show your reports.  4 BY MR. DUBIN:  5 Q. What color -- what is the refractive  6 index of talc?  7 A. It has wide -- a large  8 birefringence, but normally it will be  9 somewhere in the range of around 1.540 to  10 1.605, based on the experience of what I have  11 seen.  12 Q. How about a talc plate, a flat talc  13 plate? What is -- what is the refractive  14 index of a talc plate?  15 MS. O'DELL: Object to the  16 form.  17 THE WITNESS: I don't believe  18 the talc plate has any birefringence, but the  19 edges that I have seen have been blue in 1.55,  20 and have been yellowish in 1.605.  21 BY MR. DUBIN:  22 Q. Did the CSDS colors associated with  23 talc itself in 1.550 oil include the color  24 red?  25 MS. O'DELL: Would you repeat</p>
<p style="text-align: right;">Page 55</p> <p>1 Q. Okay. What color are the particles?  2 MS. O'DELL: Objection to the  3 form.  4 What particle? What --  5 BY MR. DUBIN:  6 Q. The particle that you're calling  7 chrysotile in the reports that you're talking  8 about today?  9 MR. LUDWIG: Is there a  10 specific report you want to show him? This  11 right here, it looks like an exhibit created  12 by defense counsel. So that's not -- he is  13 not here to opine about this exhibit that  14 looks like a PowerPoint by someone else.  15 This is not a --  16 MR. DUBIN: This is enough  17 speaking objections. You can make your  18 objections if you want to make your  19 objections. If you want to instruct your  20 witness not to answer the question, then you  21 can do that, but no more speaking objections.  22 It's gone way too far.  23 MR. LUDWIG: Based on the scope  24 that the Judge had lined out, I am instructing  25 him not to answer that question.</p>	<p style="text-align: right;">Page 57</p> <p>1 the question? I missed the first part.  2 BY MR. DUBIN:  3 Q. Do the central stop dispersion  4 staining colors of talc plates themselves in  5 1.550 oil include the color red?  6 MS. O'DELL: Object to the  7 form.  8 MR. LUDWIG: Same objection as  9 before.  10 I instruct you not to answer.  11 That's -- that calls for an  12 expert opinion.  13 MR. DUBIN: I am asking his  14 understanding and it relates to this work that  15 he is doing.  16 BY MR. DUBIN:  17 Q. Did it -- does it include red?  18 MS. O'DELL: If you have a  19 specific particle you would like to ask him  20 about, that's within the scope of the order,  21 but to ask it in isolation is beyond the scope  22 and seeks an expert opinion.  23 MR. DUBIN: Fine --  24 MR. LUDWIG: Join.  25 MR. DUBIN: -- when you get to</p>

<p style="text-align: right;">Page 58</p> <p>1 the specific color, the specific reports.  2 BY MR. DUBIN:  3 Q. So let's look at one of your reports  4 just so we can understand, again, what color  5 talc should be. So we're now going to be  6 looking at an image from your -- from the  7 September 16, 2020 report on Chinese talc  8 research samples where you were the PLM  9 analyst.  10 MR. DUBIN: So can we make that  11 image exhibit 5.  12 (Exhibit 5 marked for  13 identification.)  14 MS. O'DELL: So, first, object  15 to a reference that those reports are his  16 report. Those reports are reports from  17 Dr. Longo, first.  18 Second, if you're going to ask  19 him a question about a report, it needs to be  20 put in the chat and the specific page that  21 you're referring to needs to be identified so  22 he can see it in context.  23 MR. DUBIN: And I am going to  24 identify the specific page that we're talking  25 about. So let's put it in chat and then we</p>	<p style="text-align: right;">Page 60</p> <p>1 don't know if it's his report or not. I trust  2 Ms. O'Dell.  3 So you're instructed not to  4 answer.  5 MR. DUBIN: Okay. We'll  6 double-check what you're -- the list that went  7 in, but I believe that the results in this are  8 included in the reports, but we'll -- I'll  9 hold off on this image until after a break so  10 that we don't have to spend time arguing it.  11 BY MR. DUBIN:  12 Q. Let's look at another image first,  13 but before I get to more images, I want to  14 stop and ask you a little bit about your  15 microscopes, okay, and what microscopes you  16 were using and how you set them up.  17 At some point initially were  18 you using an Olympus microscope for -- to look  19 at Johnson &amp; Johnson for chrysotile?  20 A. Olympus BH2.  21 Q. And that -- so can you repeat the  22 model number for me? BX?  23 A. BH, bravo --  24 Q. Okay. BH2. Okay. And those  25 microscopes had tungsten lightbulbs?</p>
<p style="text-align: right;">Page 59</p> <p>1 can call it up, okay, and then we're going to  2 go to page 3 of this.  3 MS. O'DELL: And if you would  4 identify -- please, just if you'll go back to  5 page 1. Because I am not seeing it in the  6 chat yet.  7 MR. LUDWIG: It's in the chat  8 here now.  9 MR. DUBIN: It is in the chat.  10 MS. O'DELL: Okay.  11 MR. DUBIN: 296, actually, is  12 the image and we can rotate that so we can see  13 it better.  14 MS. O'DELL: And what's -- I'm  15 sorry, Morty. I couldn't see it. I was too  16 slow trying to see. I see here. Just a  17 moment. Let me make sure that this is  18 actually a report at issue in the MDL.  19 This is not one of the reports  20 that's been disclosed in the MDL and so we  21 would object to questioning based on that.  22 MR. LUDWIG: If it's not a  23 report disclosed in the MDL and it's not  24 subject to the Judge's scope, then I am  25 instructing the witness not to answer. I</p>	<p style="text-align: right;">Page 61</p> <p>1 A. Yes, sir.  2 Q. And then at some point you switched  3 over to Leica microscopes; is that right?  4 A. That is correct.  5 Q. And what was the Leica model number?  6 A. As I recall, it's the 2700P.  7 Q. Do you recall approximately when you  8 changed over microscopes?  9 A. It was during the early part of  10 2021, I believe.  11 Q. And just so we understand basically  12 how it operated, how was illumination  13 controlled on the Olympus PLM?  14 A. By individual controls on the side  15 and to bring up as much light as possible.  16 Q. Okay. So was it a dial? Was it a  17 switch? How did you adjust illumination?  18 A. On the lamp itself, there was a  19 little dial on the side.  20 Q. Okay. And what -- did MAS have any  21 protocols for how illumination should be set  22 on the Olympus microscope when doing the  23 analysis?  24 A. I would always set it myself to the  25 highest illumination.</p>



<p style="text-align: right;">Page 62</p> <p>1 Q. Okay. As a PLM analyst, how do you 2 tell if an image is appropriately illuminated? 3 A. Well, if the scope had capability, 4 we use Kohler illumination, but the best way 5 to get the most illumination out of any type 6 of scope is to have all the different parts 7 align and centered. 8 Q. Okay. And is it important for a PLM 9 analyst to be able to see all the particles in 10 the field of view clearly? 11 A. Through the ocular, yes. 12 Q. When you were doing your analysis on 13 the Olympus microscope and you were looking 14 for the colors of the particle, were you 15 typically doing that by assessing it through 16 the eyepiece of the microscope or by looking 17 at the -- or looking at a screen? 18 A. Through the microscope. 19 Q. And did the -- what is white 20 balancing? 21 A. Basically, it takes the program that 22 you're using for the graphics and allows it to 23 adjust to the pure white light. 24 Q. And did the Olympus come with any 25 filters, like a daylight filter or blue</p>	<p style="text-align: right;">Page 64</p> <p>1 MR. LUDWIG: Is there a 2 specific report you're asking about? 3 MR. DUBIN: There are a set of 4 reports that are done on an Olympus 5 microscope. There are then a set of reports 6 that are done on the Leica microscope. 7 I am asking about the ones he 8 did on Olympus. If we want -- if we need to 9 call up an example, I am happy to do that. So 10 we'll call up an example of that. 11 We can go to the Zimmerman 12 report and that will be exhibit 6 and so let's 13 make that exhibit 6. For internal reference 14 it's CX-6. It's -- this is an image from the 15 February 24, 2020 analysis of Johnson &amp; 16 Johnson. We can put it in chat and call it 17 up. 18 (Exhibit 6 marked for 19 identification.) 20 BY MR. DUBIN: 21 Q. Okay. And I want to look at an 22 image there. We can go to, I guess, 39 of the 23 report. I am just going to -- okay. For 24 example, this was in 2020. 25 So this would be on the Olympus</p>
<p style="text-align: right;">Page 63</p> <p>1 filter, to perform white balancing with? 2 A. It had a -- we had a blue diffusion, 3 but there was nothing in -- to do white 4 balance, you have to have a white background. 5 Q. So it came with a blue light or 6 daylight filter? 7 A. I would just remove the diffuser. 8 Q. I am sorry. I don't understand. 9 Would -- did the microscope 10 come with or did you have a blue light or 11 daylight filter on the Olympus? 12 A. I don't recall. 13 Q. Do you know whether you used a blue 14 light or a daylight filter when performing 15 analysis for chrysotile in Johnson &amp; Johnson 16 with the Olympus microscope? 17 MR. LUDWIG: Objection to form. 18 Is there are a specific test 19 you're asking about? It's my understanding 20 there was lots of tests. 21 So I am going to object to the 22 form. Same scope issue. 23 MR. DUBIN: It's the reports at 24 issue. I'm asking about his microscope setup 25 for the reports at issue.</p>	<p style="text-align: right;">Page 65</p> <p>1 microscope, correct? 2 A. That is correct. 3 Q. Okay. So now we have an image. 4 We're talking about a specific report. 5 When you were doing these 6 analyses for Johnson &amp; Johnson, were you using 7 a blue light or daylight filter? 8 A. I don't recall if we ever had any 9 specific daylight or blue filters for the 10 Olympus. The only thing blue was the 11 diffuser. 12 MS. O'DELL: What is your other 13 report? 14 MR. DUBIN: So this is -- this 15 was page 36, I think. 16 BY MR. DUBIN: 17 Q. All right. We'll come back to that 18 in a bit. 19 Do you know what the purpose is 20 of a blue light or a daylight filter? 21 MS. O'DELL: Object to the 22 form. 23 MR. LUDWIG: Object to the 24 form, yeah. It calls for expert testimony. 25 I instruct you not to answer</p>

<p style="text-align: right;">Page 66</p> <p>1 that question.</p> <p>2 MR. DUBIN: You're instructing</p> <p>3 him not to answer? I am asking him about the</p> <p>4 work he did, how he set up his microscope, and</p> <p>5 what filters he was using and you're</p> <p>6 instructing him not to answer that?</p> <p>7 MS. O'DELL: That was not your</p> <p>8 question.</p> <p>9 MR. DUBIN: Well, I just asked</p> <p>10 him about whether it had a blue light filter</p> <p>11 and whether he was using it and I am asking</p> <p>12 him now what his understanding of the purpose</p> <p>13 of that type of filter is. Are you</p> <p>14 instructing him not to answer that question?</p> <p>15 MS. O'DELL: He is here to --</p> <p>16 he is here to testify to what he did, which</p> <p>17 he -- the equipment he used, which he has been</p> <p>18 responding to those questions.</p> <p>19 Understanding about certain</p> <p>20 methodologies, giving his opinion about</p> <p>21 certain methodologies is beyond the scope of</p> <p>22 what Judge Schneider has ordered.</p> <p>23 MR. DUBIN: Are you instructing</p> <p>24 him not to answer --</p> <p>25 MR. LUDWIG: The objection --</p>	<p style="text-align: right;">Page 68</p> <p>1 get there. Okay. Thank you.</p> <p>2 BY MR. DUBIN:</p> <p>3 Q. Do you know how looking at an image</p> <p>4 to tell whether a blue light filter or</p> <p>5 daylight filter is being used?</p> <p>6 A. I don't recall ever dealing with</p> <p>7 them.</p> <p>8 Q. Okay. How was focus adjusted on the</p> <p>9 Olympus microscope?</p> <p>10 A. Focus would be adjusted using the</p> <p>11 fine focus knob.</p> <p>12 Q. Okay. I want to show you another</p> <p>13 image and ask you if you can tell me whether a</p> <p>14 blue light filter is being used or not.</p> <p>15 MR. DUBIN: It will be</p> <p>16 exhibit -- what number are we on? We are now</p> <p>17 on six?</p> <p>18 THE COURT REPORTER: Seven.</p> <p>19 MR. DUBIN: And that is --</p> <p>20 THE COURT REPORTER: You're on</p> <p>21 exhibit 7, I believe.</p> <p>22 MR. DUBIN: Exhibit 7. Okay.</p> <p>23 That is CX-11A to call it up and if you could</p> <p>24 just go to page 22 of it and put it in chat.</p> <p>25 MS. O'DELL: Mr. Hess, just</p>
<p style="text-align: right;">Page 67</p> <p>1 MR. DUBIN: -- a simple</p> <p>2 question about the purpose of a blue light</p> <p>3 filter? Are you instructing him not to</p> <p>4 answer?</p> <p>5 MR. LUDWIG: Yes.</p> <p>6 MR. DUBIN: Okay.</p> <p>7 MR. LUDWIG: I believe that is</p> <p>8 outside the scope of what the Judge just</p> <p>9 said --</p> <p>10 MR. DUBIN: I really don't --</p> <p>11 if you instruct him not to answer, I don't</p> <p>12 need to hear a long speaking objection in</p> <p>13 addition.</p> <p>14 MR. LUDWIG: Sure. Fair</p> <p>15 enough.</p> <p>16 MS. O'DELL: And just for the</p> <p>17 record, Morty -- and I think it's just a page</p> <p>18 number issue -- you identified what's on the</p> <p>19 screen as page 36 of the report. I am</p> <p>20 assuming you mean 36 -- page 36 in the PDF?</p> <p>21 MR. KEESTER: It's 39 in the</p> <p>22 PDF.</p> <p>23 MR. DUBIN: Thirty-nine.</p> <p>24 Sorry.</p> <p>25 MS. O'DELL: Okay. Let me just</p>	<p style="text-align: right;">Page 69</p> <p>1 give us a moment to see what's going to be put</p> <p>2 on the screen and what the report is.</p> <p>3 (Exhibit 7 marked for</p> <p>4 identification.)</p> <p>5 BY MR. DUBIN:</p> <p>6 Q. Page 22, can you tell me if a blue</p> <p>7 light or daylight filter is being used on this</p> <p>8 image?</p> <p>9 MR. LUDWIG: Objection --</p> <p>10 objection. This, once again, calls for expert</p> <p>11 opinion, which is outside the scope of the</p> <p>12 purpose of this deposition as instructed by</p> <p>13 the Judge.</p> <p>14 MR. DUBIN: Are you instructing</p> <p>15 him not to answer the question?</p> <p>16 MR. LUDWIG: I am instructing</p> <p>17 him not to answer the question.</p> <p>18 MS. O'DELL: Yes. This is not</p> <p>19 a document that's been disclosed in the MDL.</p> <p>20 It's a report for Dr. Longo. It's analysis of</p> <p>21 ceramic slip clay for something else that's</p> <p>22 not related and we object to the use of this</p> <p>23 exhibit.</p> <p>24 MR. DUBIN: Okay. Can we call</p> <p>25 up -- we'll make the next exhibit in order</p>

<p style="text-align: right;">Page 70</p> <p>1 Hess slide 20.</p> <p>2 THE COURT REPORTER: This is</p> <p>3 exhibit 8.</p> <p>4 MR. DUBIN: That's exhibit 8.</p> <p>5 Can we call that up, Jake?</p> <p>6 (Exhibit 8 marked for</p> <p>7 identification.)</p> <p>8 BY MR. DUBIN:</p> <p>9 Q. I am putting up the image that I</p> <p>10 showed you before, as well as the image from</p> <p>11 Zimmerman that I showed you before. These are</p> <p>12 both analyses that you performed.</p> <p>13 Can you tell me why the color</p> <p>14 of the talc is different in the two images?</p> <p>15 MS. O'DELL: We object to the</p> <p>16 use of this document. First, Vanderbilt is</p> <p>17 not at issue in this case, it's not a report</p> <p>18 that's at issue in this case. We object to</p> <p>19 the use of that image.</p> <p>20 To the degree you want to have</p> <p>21 him -- ask him about the Zimmerman report.</p> <p>22 You had it up. He is welcome to answer</p> <p>23 questions, but we object to the use of this</p> <p>24 defense created exhibit.</p> <p>25 MR. LUDWIG: And I am going to</p>	<p style="text-align: right;">Page 72</p> <p>1 And if I asked you about the</p> <p>2 differences in illumination in these two</p> <p>3 images, are you going to instruct your witness</p> <p>4 not to answer that also?</p> <p>5 MR. LUDWIG: Yes.</p> <p>6 MS. O'DELL: And, again -- and,</p> <p>7 Jake, I know you have a lot going on, but if</p> <p>8 you would put that in the chat, please.</p> <p>9 BY MR. DUBIN:</p> <p>10 Q. How are your images being taken on</p> <p>11 the Olympus? How are the images being taken?</p> <p>12 A. It was done using an AmScope camera</p> <p>13 and an AmScope program.</p> <p>14 Q. Okay. Were there any specific</p> <p>15 settings that you had on the camera for</p> <p>16 purposes of taking the images?</p> <p>17 A. I don't recall everything.</p> <p>18 Q. Are you familiar -- you're familiar</p> <p>19 with ISO 22262-1?</p> <p>20 A. Familiar.</p> <p>21 Q. Do you know whether it says anything</p> <p>22 about using blue or daylight filters?</p> <p>23 MS. O'DELL: Object to the</p> <p>24 form; calls for expert opinion; beyond the</p> <p>25 scope of the work that Mr. Hess did in the</p>
<p style="text-align: right;">Page 71</p> <p>1 join and I am going to instruct him not to</p> <p>2 answer.</p> <p>3 Once again, you're getting into</p> <p>4 expert opinion, which is outside the scope of</p> <p>5 what the Judge instructed this witness.</p> <p>6 MR. DUBIN: Was your -- okay.</p> <p>7 So you're instructing him not to answer. I am</p> <p>8 going to ask another question. If you</p> <p>9 instruct him not to answer, then so be it.</p> <p>10 BY MR. DUBIN:</p> <p>11 Q. But was the microscope set up</p> <p>12 differently in these two analyses? Can you</p> <p>13 tell by looking at the images whether the</p> <p>14 microscope was set up differently in the two</p> <p>15 analyses?</p> <p>16 MR. LUDWIG: Same objection.</p> <p>17 MS. O'DELL: Please put the</p> <p>18 exhibit in the chat.</p> <p>19 MR. DUBIN: Are you instructing</p> <p>20 him not to answer?</p> <p>21 MR. LUDWIG: Yes.</p> <p>22 MR. DUBIN: And if -- can you</p> <p>23 leave it back up, Jake? What's going on? I</p> <p>24 am not done yet. Can you put that back up,</p> <p>25 Jake? Thank you.</p>	<p style="text-align: right;">Page 73</p> <p>1 MDL; and that's my objection.</p> <p>2 Counsel can decide whether to</p> <p>3 instruct him not to answer.</p> <p>4 MR. LUDWIG: I am instructing</p> <p>5 you not to answer that.</p> <p>6 BY MR. DUBIN:</p> <p>7 Q. Okay. Let's talk about your Leica</p> <p>8 microscope setup.</p> <p>9 First, how was illumination</p> <p>10 adjusted on the Leica microscope?</p> <p>11 A. It had a lamp knob on the side,</p> <p>12 which we could bring up full illumination.</p> <p>13 Q. Was it a dial or was it -- was it a</p> <p>14 switch? How did the illumination work?</p> <p>15 A. It was a dial.</p> <p>16 Q. And what -- if you turn that dial,</p> <p>17 if you kept turning it, would it stop at some</p> <p>18 point or could you continue to turn it and</p> <p>19 turn it?</p> <p>20 A. I could continue to turn it.</p> <p>21 Q. Okay. So how did you set the</p> <p>22 brightness on the Leica?</p> <p>23 A. By observation through the</p> <p>24 microscope itself to the brightest point</p> <p>25 available.</p>



<p style="text-align: right;">Page 74</p> <p>1 Q. So you -- did you always keep it at 2 the brightest point available? 3 A. Yes, sir. 4 Q. Okay. And did the Leica microscope 5 come with any filters? 6 A. The only filter I'm aware of is the 7 530 nanometer plate. 8 Q. Did it have a daylight filter 9 switch? 10 A. Not that I am aware of. 11 MR. DUBIN: Let's make exhibit 12 9 Hess slide 22 and we can call that up. 13 (Exhibit 9 marked for 14 identification.) 15 BY MR. DUBIN: 16 Q. Is this -- does this look familiar 17 to you as the Leica microscope that you were 18 using? 19 A. It looks familiar. 20 Q. Do you recall the switches that we 21 see here: Daylight filter switch, neutral 22 density filter switch? 23 A. Yes. 24 Q. Okay. Do you know whether your -- 25 when you started using the Leica microscope,</p>	<p style="text-align: right;">Page 76</p> <p>1 MR. DUBIN: Exhibit 10. 2 (Exhibit 10 marked for 3 identification.) 4 BY MR. DUBIN: 5 Q. Do you know why your images taken on 6 the Olympus microscope of talc are more orange 7 than reference talc images? 8 MS. O'DELL: I object to the 9 use of this exhibit. It's unclear if it came 10 from a report that's at issue in this 11 deposition, it's unclear if it's -- if it's 12 Mr. Hess' work, and we object to its use. 13 MR. LUDWIG: And I will join. 14 It outside the scope of the parameter of the 15 deposition. I am instructing Mr. Hess not to 16 answer that question. 17 MR. DUBIN: Okay. 18 BY MR. DUBIN: 19 Q. Let's, again, go to your Zimmerman 20 report. We have already marked that as an 21 exhibit. We can call it back up, CX-6. So we 22 have looked at this already. Let's go back to 23 that image, starting at page 39. 24 So this is something that 25 you're calling chrysotile in parallel in</p>
<p style="text-align: right;">Page 75</p> <p>1 whether your daylight filter switch was in an 2 "on" or "off" position? 3 A. I don't recall today. 4 Q. All right. Are you familiar with 5 what reference talc looks like from the USP 6 documents? 7 MR. LUDWIG: Objection; calls 8 for expert opinion. I am instructing him not 9 to answer. 10 MS. O'DELL: Join. 11 MR. DUBIN: Okay. Well, 12 just -- we'll see. You may instruct him not 13 to answer again, but I am going to ask it. 14 If we can put Hess slide 24 as 15 the next exhibit. 16 MS. O'DELL: We have not gotten 17 the last exhibit in the chat yet. So, please, 18 if we can just pause and take the time and put 19 that in the chat? Thank you. 20 MR. KEESTER: I'm sorry, Morty. 21 What slide are we doing? 22 MR. DUBIN: Twenty-four. 23 MR. LUDWIG: Is slide 24 24 exhibit 9 or is slide 24 exhibit 10? I'm 25 sorry.</p>	<p style="text-align: right;">Page 77</p> <p>1 1.550. 2 What color is that? 3 MS. O'DELL: If you need to see 4 it and see it more closely, Mr. Hess, please 5 let us know that. 6 And if there is -- if there is 7 a specific structure you're referring to that 8 you can direct Mr. Hess? 9 MR. DUBIN: Right. 10 BY MR. DUBIN: 11 Q. The one with the micron bar under it 12 is the one that they are calling chrysotile. 13 What color is it? 14 MR. LUDWIG: Can I have that 15 question reread, please? 16 THE COURT REPORTER: One 17 moment. 18 "QUESTION: So this is 19 something that you're calling chrysotile 20 in parallel in 1.550. 21 "What color is that?" 22 MR. LUDWIG: I am going to 23 object once again. It's calling for an expert 24 opinion. 25 MR. DUBIN: This is -- I am</p>

<p style="text-align: right;">Page 78</p> <p>1 asking him about his reports that are at issue 2 in this case and asking him what color that he 3 is calling particles and that is exactly in 4 the scope of the deposition. 5 So unless you're instructing 6 him not to answer that as well, my question 7 stands. 8 MR. LUDWIG: I instruct him not 9 to answer that question. 10 MR. DUBIN: Okay. So now 11 you're instructing the witness not to answer 12 questions even about the specific reports that 13 he was -- that we were permitted to depose him 14 on. 15 Is that my understanding? 16 MS. O'DELL: So would you 17 repeat your question, please? 18 MR. DUBIN: Oh, my goodness. 19 What color is the particle that you're calling 20 chrysotile here? 21 MR. LUDWIG: I am standing by 22 my objection. I am instructing him not to 23 answer. 24 It goes to -- you're asking him 25 to opine as to the color. The color is on the</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. We can zoom more in. 2 A. The center part of it is a golden 3 yellow, but I cannot determine the edges, 4 which is where I need to look. 5 Q. Okay. Well, we'll go over this edge 6 effect, but you can agree that this is not -- 7 this does not look like reference chrysotile, 8 correct? 9 MS. O'DELL: Object to the 10 form. 11 MR. LUDWIG: Same objection. 12 THE WITNESS: The center of the 13 particle is not what you would usually call. 14 BY MR. DUBIN: 15 Q. And -- sorry. And you see that 16 there are rounded structures in this image, 17 right? 18 A. There are. 19 Q. Those are talc? 20 A. Some may be. 21 Q. Are they the same color as the 22 particle that you're calling chrysotile? 23 MS. O'DELL: Object to the 24 form. 25 THE WITNESS: It is, but I --</p>
<p style="text-align: right;">Page 79</p> <p>1 screen and it is part of an expert report 2 prepared by MAS and you're taking it out of 3 context. 4 So I am going to instruct you 5 not to answer. 6 If you want to ask him how he 7 developed the color, that's what the Judge 8 said, but -- 9 MR. DUBIN: (Inaudible.) 10 MR. LUDWIG: -- his personal 11 involvement. 12 BY MR. DUBIN: 13 Q. You are the analyst who did this 14 work for the Zimmerman report and we can go 15 through your PLM -- the PLM sheets. 16 You did this analysis, right? 17 MR. LUDWIG: Okay. That's 18 fine. Let's do that. 19 BY MR. DUBIN: 20 Q. You did this analysis? These are 21 your PLM images, correct, Mr. Hess? 22 A. It is. 23 Q. So I'm asking you what color did you 24 assess this particle as? 25 A. Could you zoom in on the particle?</p>	<p style="text-align: right;">Page 81</p> <p>1 the other particle colors, without being able 2 to see the true edges of the particle in 3 question -- 4 BY MR. DUBIN: 5 Q. Okay. We'll talk about edges -- 6 MS. O'DELL: Excuse me, Morty. 7 I don't believe you could hear. He is not 8 finished with his answer. 9 BY MR. DUBIN: 10 Q. Go ahead. 11 A. -- I cannot comment. 12 Q. We'll talk about edges later. 13 Have you seen any PLM work of 14 Johnson &amp; Johnson done by any other experts? 15 A. I don't recall. 16 MR. DUBIN: Okay. Let's put up 17 Hess slide 25 as exhibit 11. 18 (Exhibit 11 marked for 19 identification.) 20 BY MR. DUBIN: 21 Q. We're looking at images of PLM -- 22 and I will mark the entire report also from 23 Mr. Poye and from you -- both from on talcs. 24 Do you have any understanding 25 why the images look so different?</p>

<p style="text-align: right;">Page 82</p> <p>1 MR. LUDWIG: Objection to form; 2 that goes into expert testimony and you made 3 your question -- this appears to be a defense 4 exhibit, I guess, comparing two different 5 samples. It is not a specific report from 6 MAS. 7 So I am instructing the witness 8 not to answer. This calls for expert opinion, 9 outside the scope of his testimony. 10 MS. O'DELL: Join. 11 MR. DUBIN: So the whole -- so 12 that we have the whole report in the record, 13 let's mark CX-53 as exhibit 11. 14 MS. O'DELL: Please put the 15 slide in the chat screen, Jake. Thank you. 16 THE COURT REPORTER: I just 17 want to confirm. Exhibit 11 was slide 25. 18 Are we now marking the whole report? 19 MR. DUBIN: Yeah, we're going 20 to now mark the whole report as exhibit 11. 21 MS. O'DELL: And we have -- 22 since the -- 23 MR. DUBIN: I am just marking 24 it for the record. I understand you have 25 objected to my asking him about it.</p>	<p style="text-align: right;">Page 84</p> <p>1 for your deposition today was some material 2 from Dr. Su. 3 What did you review? 4 A. I reviewed primarily the -- all the 5 images that he had put in the comments. For 6 lack of a better way to put it, the slide 7 show. 8 Q. Okay. Have you reviewed his 9 affidavit entitled: Review of Dr. Longo's PLM 10 Methods for the Identification of Chrysotile? 11 A. I don't recall that one. 12 Q. Okay. What, if any, comments do you 13 have on the slides that you reviewed from 14 Dr. Su? 15 A. Well -- 16 MS. O'DELL: Object to form. 17 MR. LUDWIG: Object to the 18 form. 19 MS. O'DELL: Calls for expert 20 opinion. It's beyond the scope of this 21 deposition. 22 MR. DUBIN: Are you instructing 23 him not to answer? 24 MR. LUDWIG: I am instructing 25 him not to answer.</p>
<p style="text-align: right;">Page 83</p> <p>1 MS. O'DELL: Understood, but is 2 the report going to be exhibit 12 and the 3 slide is going to be exhibit 11? 4 MR. DUBIN: I thought the 5 report was 11, but maybe I miscounted. 6 MR. LUDWIG: Exhibit 11 was the 7 slide and then exhibit 12 was going to be the 8 full report, if that's what you want to do. 9 I'm sorry. I am not trying to 10 step on your toes. I am trying to be helpful 11 in this. 12 MR. DUBIN: If the slide was 13 not marked -- I thought that was exhibit 10, 14 but if it's not marked, that's fine. I can 15 make it exhibit 12. 16 THE COURT REPORTER: This is 17 the court reporter. We have slide 25 as 18 exhibit 11. We have the report as exhibit 12. 19 MR. DUBIN: Okay. 20 MS. O'DELL: Thank you. 21 (Exhibit 12 marked for 22 identification.) 23 BY MR. DUBIN: 24 Q. All right. You indicated that one 25 of the things that you reviewed in preparation</p>	<p style="text-align: right;">Page 85</p> <p>1 BY MR. DUBIN: 2 Q. You also indicated you reviewed some 3 materials from Dr. Wylie? 4 MS. O'DELL: Same. 5 BY MR. DUBIN: 6 Q. What did you review? 7 A. The report that -- I don't recall 8 the name of the report, but I believe it was 9 her most recent report. 10 Q. Okay. Do you have any comments on 11 the -- on her review of your work? 12 MR. LUDWIG: Same objection. 13 I instruct him not to answer. 14 He is not here to provide criticisms of 15 Dr. Wylie. The Court made it very clear, the 16 scope of the testimony. 17 MS. O'DELL: Join. 18 MR. DUBIN: These are all 19 related to his work that is the subject of 20 this deposition, but if you're instructing him 21 not to answer, then that will be an 22 instruction. We'll take it up at some point. 23 Because we're clearly going to 24 have to go back to the drawing board about the 25 way that these objections are being made, but</p>

<p style="text-align: right;">Page 86</p> <p>1 if you're instructing him not to answer, but  2 my proffer is that they are all about the  3 reports at issue in this case.  4 MS. O'DELL: Mr. Hess is here  5 today to answer questions regarding his  6 reports and he has answered your questions  7 about those. He is not here to offer expert  8 opinion, criticism, thoughts, et cetera, about  9 defense or expert witnesses.  10 MR. DUBIN: Okay.  11 BY MR. DUBIN:  12 Q. In terms of illumination, I want to  13 look at another report just quickly, your  14 report and your analysis. It will be exhibit  15 13. It's CX-28 is the internal reference and  16 it's dated 4/13/2021.  17 MR. DUBIN: If we could put it  18 in chat and then call it up.  19 MS. O'DELL: Chris, you put a  20 comment in chat. Did you have an objection?  21 We're not hearing you if you're making an  22 objection.  23 MR. PLACITELLA: Well, my  24 objection is that it seems like it's  25 repeatedly -- documents are repeatedly being</p>	<p style="text-align: right;">Page 88</p> <p>1 Is it your testimony that this  2 image was taken at maximum illumination?  3 A. Yes, sir.  4 Q. So the brightness level on the  5 Olympus does not go any higher than this?  6 MR. LUDWIG: Objection; asked  7 and answered.  8 THE WITNESS: Pardon?  9 MR. LUDWIG: I said, objection;  10 asked and answered.  11 BY MR. DUBIN:  12 Q. Is that correct? Your testimony is  13 that the Olympus microscope you were using at  14 this time, it cannot take any brighter images  15 than this.  16 Is that your testimony?  17 MS. O'DELL: Object to the  18 form.  19 THE WITNESS: May I see the  20 lower part of the image?  21 BY MR. DUBIN:  22 Q. I'm sorry? You want to see the  23 lower part of the image? Sure.  24 A. Thank you.  25 That was not taken on the</p>
<p style="text-align: right;">Page 87</p> <p>1 put up in contravention of the Court's Order  2 and we're here to try to get through this  3 deposition and the purposes of trying to make  4 a record.  5 I mean, this is exactly what  6 the Judge said not to do --  7 MR. DUBIN: Okay.  8 MR. PLACITELLA: -- and you  9 keep doing it.  10 MR. DUBIN: I completely  11 disagree with you and I am making my record.  12 He is being instructed not to answer, I need a  13 record of that, and thank you for your  14 comments, but we're moving on.  15 MR. PLACITELLA: Okay. No  16 problem.  17 MR. DUBIN: Thanks.  18 (Exhibit 13 marked for  19 identification.)  20 BY MR. DUBIN:  21 Q. So I just want to understand your  22 testimony. If we go to PDF 2 here, this is  23 one of your -- sorry. It will be the image.  24 So it's at 84. And, again, I want to talk to  25 you a little bit about illumination.</p>	<p style="text-align: right;">Page 89</p> <p>1 Olympus.  2 Q. Okay. So this is Leica?  3 A. This is a Leica.  4 Q. Okay. So is it your testimony that  5 the Leica microscope cannot take any brighter  6 images than this?  7 MS. O'DELL: Object to the  8 form.  9 MR. LUDWIG: Object to the  10 form.  11 THE WITNESS: That is the  12 brightest I could get for that particular  13 mount.  14 BY MR. DUBIN:  15 Q. Okay. And, for example, if we just  16 look at page 85 of this, we can see the  17 perpendicular.  18 Is it your testimony that this  19 type of image is taken at maximum brightness  20 on the Leica?  21 MS. O'DELL: Object to the  22 form.  23 THE WITNESS: It is.  24 BY MR. DUBIN:  25 Q. Okay. We'll come back to</p>

<p style="text-align: right;">Page 90</p> <p>1 illumination in a bit, but let's first just 2 talk a little bit about the switch that was 3 made at some point to 1.560 oil. 4 Do you know why that switch was 5 made in your analysis? 6 MR. DUBIN: You can take this 7 down, Jake. 8 THE WITNESS: The switch was 9 made at the suggestion -- I don't recall his 10 name, but he was in, talking with Dr. Longo; 11 and he was back, watching me do some work; and 12 he made the suggestion because of the intense 13 stretch of yellow on the color chart for 1.55, 14 that we do it with 1.560 to better define the 15 upper level of what we were finding in the 16 chrysotile. 17 MR. LUDWIG: I think the 18 question went to switching microscopes. 19 MR. DUBIN: No. He understood 20 the question. It was why the oil was 21 switched. 22 MR. LUDWIG: I'm sorry. 23 BY MR. DUBIN: 24 Q. Okay. And what is the expected 25 effect if you are switching from 1.550 to 1.60</p>	<p style="text-align: right;">Page 92</p> <p>1 bit. Let's put that in chat and we can go to 2 page 32 of it. Sorry. Is it page 32? It 3 should be the image. Okay. 4 Well, let's -- I will -- we can 5 just take the break now. I will leave that in 6 chat so that if anybody needs it over the 7 break. 8 What are we going to take? Ten 9 minutes? 10 MR. LUDWIG: Ten minutes is 11 great. 12 MR. DUBIN: All right. We can 13 do ten minutes. 14 VIDEOGRAPHER: The time is 15 11:19 a.m. We are off the record. 16 (Break held off the record.) 17 VIDEOGRAPHER: The time is 18 11:37 a.m. We are back on the record. 19 MR. DUBIN: We are going to 20 start talking about the Valadez report and the 21 Valadez report -- if we can put it back up? 22 We can just go to the front cover first and 23 then we'll come back here to the image. Okay. 24 BY MR. DUBIN: 25 Q. So the -- this is what we referred</p>
<p style="text-align: right;">Page 91</p> <p>1 oil? 2 A. We didn't switch to 1.60. 3 Q. Sorry. What did you say? 4 A. That we didn't switch to 1.60. 5 Q. You didn't switch to 1.560? Maybe I 6 misspoke. 7 What is the expected effect of 8 switching to one, five -- 1.560 oil? 9 MR. LUDWIG: I'm going to 10 object; that calls for an expert opinion. I 11 am instructing the witness not to answer that 12 question. 13 MR. DUBIN: Okay. Well, I want 14 to call up -- let's just mark the Valadez 15 report as the next exhibit in order. I guess 16 that's 14. 17 (Exhibit 14 marked for 18 identification.) 19 MR. LUDWIG: Mr. Dubin, we have 20 been going for close to an hour and fifteen. 21 Do you want to just do this last one and then 22 take a break? 23 MR. DUBIN: I'll call up -- 24 I'll put up the report and I'll put it in chat 25 because we're going to talk about it for a</p>	<p style="text-align: right;">Page 93</p> <p>1 to as the Valadez report from 2023. 2 So we would be taking about a 3 Leica microscope, correct? 4 A. That is correct. 5 Q. And we're talking now about using 6 1.560 oil, right? 7 A. Yes, sir. 8 Q. Okay. And so let's go to that image 9 first. 10 MS. O'DELL: For the record, 11 what page in the PDF? 12 MR. DUBIN: What page is that, 13 Jake? 14 MR. KEESTER: This is PDF page 15 33. 16 MR. DUBIN: It's particle CSM 17 001. 18 BY MR. DUBIN: 19 Q. Now, I want to just quickly flip 20 back to the Zimmerman report we have already 21 looked at, the image, and if we can just look 22 at the image we had up before. 23 Can you see that the image in 24 the Zimmerman report is more golden or orange 25 than the image in the Valadez report? We can</p>